

BILL ANALYSIS

S.B. 865
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

This bill is an omnibus bill regarding child support. It amends multiple sections of the Family Code to clarify, conform, and remove outdated language.

S.B. 865 amends current law relating to child support enforcement.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Office of the Attorney General is modified in SECTION 22 (Section 231.015, Family Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 102.009, Family Code, by adding Subsection (e), to provide that in a proceeding under Chapter 233 (Child Support Review Process to Establish or Enforce Support Obligations), the requirements imposed by Subsections (a) (relating to those entitled to service of citation) and (c) (relating to citation on the filing of an original petition in a suit) do not apply to the extent of any conflict between those requirements and the provisions in Chapter 233.

SECTION 2. Amends Section 102.011(b), Family Code, as follows:

(b) Authorizes the court to also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if the person, as provided by Chapter 160 (Uniform Parentage Act), registered with the paternity registry maintained by the bureau of vital statistics or signed an acknowledgement of paternity of a child born in this state. Makes a nonsubstantive change.

SECTION 3. Amends Sections 154.062(b) and (c), Family Code, as follows:

(b) Provides that resources include all other income actually being received, including social security benefits other than supplemental security income. (c) Provides that resources do not include benefits paid in accordance with federal public assistance programs, rather than benefits paid in accordance with aid for families with dependent children.

SECTION 4. Amends Sections 154.130(a) and (b), Family Code, as follows:

(a) Requires the court, without regard to Rules 296 (Request for Findings of Facts and Conclusions of Law) through 299 (Omitted Findings), Texas Rules of Civil Procedure, in rendering an order of child support, to make the findings required by Subsection (b) if the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 (Application of Guidelines to Net Resources) or 154.129 (Alternative Method of Computing Support for Children in More Than One Household), as applicable.

(b) Requires the court, if findings are required by this section, to state whether the application of the guidelines would be unjust or inappropriate and is required to state the following in the child support order: the net, rather than monthly net, resources of the obligor per month are \$___; the net, rather than the monthly net, resources of the obligee per month are \$___; the percentage applied to the obligor's net resources for child support, rather than the percentage

applied to the obligor's net resources for child support by the actual order rendered by the court, is ___ percent; and, if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable. Deletes existing text requiring the court to state the amount of child support if the percentage guidelines are applied to the portion of the obligor's net resources that does not exceed the amount provided by Section 154.125(a) (relating to the guidelines for the support of a child), Family Code, is \$___; and, if applicable, that the obligor is obligated to support children in more than one household and certain facts about the children. Makes nonsubstantive and conforming changes.

SECTION 5. Amends Sections 154.181(b), (c), and (e), Family Code, as follows:

(b) Requires the court, before a hearing on temporary orders or a final order, if no hearing on temporary orders is held, to require the parties to the proceedings to disclose in a pleading or other statement if private health insurance is not in effect for the child, whether either parent has access to private health insurance at reasonable cost to the obligor, rather than to that parent.

(c) Requires the court, in rendering temporary orders, except for good cause shown, to order that any health insurance coverage in effect for the child continue in effect pending the rendition of a final order, except that the court is prohibited from requiring the continuation of any health insurance that is not available to the parent at reasonable cost to the obligor. Requires the court, except for good cause shown, to order health care coverage for the child as provided under Section 154.182 (Health Care Coverage for Child), if there is no health insurance coverage in effect for the child or if the insurance in effect is not available at a reasonable cost to the obligor.

(e) Redefines "reasonable cost."

SECTION 6. Amends Sections 154.182(a), (b), (b-1), (b-2), and (c), Family Code as follows:

(a) Requires the court to consider the accessibility, in addition to the cost and quality, of health insurance coverage available to the parties and give priority to health insurance coverage available through the employment of one of the parties if the coverage is available at a reasonable cost to the obligor.

(b) Requires the court, in determining the manner in which health care coverage for the child is to be ordered, to render its order in accordance with the following priorities, unless a party shows good cause why a particular order would not be in the best interest of the child:

(1) if health insurance is available for the child through a parent's employment or membership in a union, trade association, or other organization at reasonable cost to the obligor, rather than parent, the court is required to order that parent to include the child in the parent's health insurance;

(2) if health insurance is not available for the child under Subdivision (1) but is available to a parent from another source and at a reasonable cost to the obligor, the court is authorized to order that parent to provide health insurance for the child;

(3) if health insurance coverage is not available for the child under Subdivision (1) or (2), the court is required to order the obligor to pay the obligee, in addition to any amount ordered under the guidelines for child support, an amount, not to exceed the maximum amount that the obligor could be required to pay for health insurance under this subchapter, rather than an amount not to exceed nine percent of the obligor's monthly resources, as cash medical support for the child.

(b-1) Requires the court, if the parent ordered to provide health insurance under Subsection (b) (1) or (2) is the obligee, to order the obligor to pay the obligee, as additional child support, an amount equal to the actual cost of health insurance for the child, but not to exceed a reasonable cost to the obligor.

(b-2) Requires the court, if the court finds that neither parent has access to private health insurance at a reasonable cost to the obligor, to order the parent awarded the exclusive right to designate the child's primary resident or, to the extent permitted by law, the other parent to

apply immediately on behalf of the child for participation in a government medical assistance program or health plan.

(c) Defines "accessibility." Makes a nonsubstantive change.

SECTION 7. Amends Section 154.183(c), Family Code, to require the court, as additional child support, to allocate between the parties, according to their circumstances the reasonable and necessary health care expenses, including vision and dental expenses, of the child that are not reimbursed by health insurance or are not otherwise covered by the amount of cash medical support ordered under Section 154.182(b) (3) and amounts paid by either party as deductibles or copayments in obtaining health care services for the child covered under a health insurance policy. Makes nonsubstantive changes.

SECTION 8. Amends Section 154.187(c), Family Code, as follows:

(c) Requires an employer who has received an order or notice under this subchapter to provide to the sender, by first class mail not later than the 30th day after the date the employer receives the order or notice, a statement that the child:

(1) has been enrolled in the employer's health insurance plan, rather than a health insurance plan, or is already enrolled in another health insurance plan in accordance with a previous child support or medical support order to which the employee is subject; or

(2) cannot be enrolled or cannot be enrolled permanently in the employer's health insurance plan, rather than a health insurance plan, and provide the reason why coverage or permanent coverage cannot be provided. Makes nonsubstantive changes.

SECTION 9. Amends Section 154.191(b), Family Code, to provide that this subchapter does not limit the authority of the court to render or modify a medical support order to provide for payment of uninsured health expenses, health care costs, or health insurance premiums in a manner consistent with this subchapter. Deletes text providing that that this subchapter does not limit the authority of the court to render or modify a medical support order containing a provision for payment of uninsured health expenses, health care costs, or health insurance premiums that are in addition to and inconsistent with this subchapter.

SECTION 10. Amends Section 157.005(b), Family Code, to provide that the court retains jurisdiction to confirm the total amount of child support arrearages and render a cumulative money judgment for past-due child support, as provided by Section 157.263 (Confirmation of Arrearages), if a motion for enforcement requesting a cumulative money judgment is filed not later than the 10th anniversary after a certain date.

SECTION 11. Amends Subchapter A, Chapter 157, Family Code, by adding Section 157.009, as follows:

Sec. 157.009. CREDIT FOR PAYMENT OF DISABILITY BENEFITS. Entitles an obligator, in addition to any other credit or offset available to an obligor under this title, if a child for whom the obligor owes child support receives a lump-sum or periodic payment as a result of the obligor's disability and that payment is made to the obligee as the representative payee of the child, to a credit. Provides that the credit under this subsection is equal to the amount of the lump-sum or periodic payment and is required to be applied to any child support arrearage and interest owed by the obligor on behalf of that child at the time the payment is made.

SECTION 12. Amends Section 157.162(d), Family Code, to authorize the court, if the court determines that a respondent has failed to make one or more periodic child support payments as ordered by the court to find the respondent in contempt of court regardless of whether the respondent appears at the hearing with a copy of the payment record or other evidence showing that the respondent, as of the time of the hearing, is current in the payment of child support. Deletes existing text prohibiting the court from finding the respondent in contempt of court for failure to pay child support if the respondent appears at the hearing with a copy of the payment record or other evidence satisfactory to the court showing the respondent is current in the payment of child support as ordered by the court.

SECTION 13. Amends Section 157.262(f), Family Code, to authorize the money judgment for arrearages rendered by the court to be subject to a counterclaim or offset as provided by this title, rather than subchapter.

SECTION 14. Amends Section 157.264, Family Code, by adding Subsection (c), provide that an order rendered under Subsection (b) (relating to requiring the court to render an order relating to payments on the judgment) does not preclude or limit the use of any other means for enforcement of the judgment.

SECTION 15 Amends Section 158.203, Family Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires an employer with 250 or more employees to remit a payment required under this section, rather than for payments made under this section, by electronic funds transfer or electronic data interchange not later than the second business day after the pay date.

(b-1) Authorizes an employer with fewer than 250 employees to remit a payment required under this section by electronic funds transfer or electronic data interchange. Requires a payment remitted by the employer electronically to be remitted not later than the date specified by Subsection (b).

SECTION 16. Amends Sections 158.215(a), (b), and (c), Family Code, as follows:

(a) Redefines "lump-sum payment."

(b) Provides that this section applies only to an employer who receives an administrative writ of withholding in a Title IV-D case, rather than a writ of withholding that requires that an obligor's income be withheld for child support arrearages.

(c) Prohibits an employer to whom this section applies from making a lump-sum payment to the obligor in the amount of \$500 or more without first notifying the Title IV-D agency rather than the Title IV-D agency that issued the writ, to determine whether all or a portion of the payment should be applied to child support arrearages owed by the obligor. Makes a nonsubstantive change.

SECTION 17. Amends Section 159.611(a), Family Code, to authorize a tribunal of this state, except as provided by Section 159.615, on petition to modify a child support order issued in another state and registered in this state only if Section 159.613 does not apply and after notice and hearing the tribunal finds that this state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support and assume continuing, exclusive jurisdiction. Makes nonsubstantive changes.

SECTION 18. Amends Section 160.103(a), Family Code, to provide that except as provided by Chapter 233, this chapter governs every determination of parentage in this state. Makes a nonsubstantive change.

SECTION 19. Amends Section 160.601(b), Family Code, to provide that the proceeding is governed by the Texas Rules of Civil Procedure, except as provided by Chapter 233.

SECTION 20. Amends Section 201.009(e), Family Code, to authorize the referring court, on a request for a de novo hearing, to consider testimony or other evidence in the record, rather than other evidence in the record if the record is taken by a court recorder, in addition to witnesses or other matters presented under Section 201.015 (De Novo Hearing before Referring Court).

SECTION 21. Amends Section 201.015(c), Family Code, to make a conforming change.

SECTION 22. Amends Sections 231.015, Family Code, as follows:

Sec. 231.015. New heading: INSURANCE REPORTING PROGRAM. (a) Requires the Title IV-D agency by rule, in consultation with the Texas Department of Insurance (TDI) and representatives of the insurance industry in this state, including insurance trade associations, to operate a program, rather than establish a pilot program, to improve the enforcement of child support, including the use of child support liens under Chapter 157 (Enforcement).

Requires the program, rather than pilot program, to provide for procedures, including data matches, rather than develop processes, under which insurance companies are required to cooperate with, rather than may voluntarily cooperate with, the Title IV-D agency in identifying obligors who owe child support arrearages or who are the subject to liens for child support arrearages or who are subject to liens for child support arrearages to intercept certain liability insurance settlements or awards for claims in satisfaction of the arrearage amounts.

(b) Provides that an insurance company that provides information or responds, rather than information or otherwise responds, to a notice of child support lien or levy under Subchapter G, Chapter 157, or acts in good faith to comply with procedures established by the Title IV-D agency, rather than established in the pilot program, under this section is not liable for those acts under any law to any person.

SECTION 23. Amends Section 231.202, Family Code, as follows:

Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D CASES. Requires the Title IV-D agency, in a Title IV-D case filed under this title, including a filed under Chapter 159 (Uniform Interstate Family Support Act), to pay only the following costs and fees, including filing fees and fees for issuance and service of process as provided by Chapter 110 (Court Fees) of this code and by Sections 51.317 (b)(1) (relating to fees for filing a suit or an appeal), (2) (relating to fees for certain actions or motions), and (3) (relating to fees for issuing citations, writs, or other processes) and (b-1) (relating to fees for filing a suit, including an appeal, from an inferior court), 51.318 (b)(2) (relating to fees for a citation, commission for deposition, or certain writs), and 51.319(2) (relating to a fee for serving process for certified or registered mail), Government Code, rather than 51.317, 51.318(b)(2), and 51.319(2), Government Code.

SECTION 24. Amends Section 232.005(a), Family Code, to require that a petition under this chapter state that license suspension is required under Section 232.003 (Suspension of License) and allege the name of the licensing authority that issued a, rather than the, license the individual is believed to hold, rather than allege with regard to each license, the type, and if known, number of any license the individual is believed to hold.

SECTION 25. Amends Section 34.001, Civil Practice and Remedies Code, by adding Subsection (c) to provide that this section does not apply to a judgment for child support under the Family Code.

SECTION 26. Amends Section 12.0011, Property Code, by adding Subsection (d) to provide that this section does not apply to a child support lien notice issued by the Title IV-D agency under Chapter 157, Family Code. Defines "Title IV-D agency."

SECTION 27. Amends Section 601.454(c), Transportation Code, to authorize that the agent, on request, and subject to appropriate safeguards to protect the privacy of motor vehicle owners developed by the implementing agencies and the attorney general, to provide the information to the attorney general for the purpose of enforcing child support obligations. Makes nonsubstantive changes.

SECTION 28. Repealer: Section 154.130(c) (relating to the application of the guidelines under Section 154.129), Family Code.

Repealer: Section 154.182(d) (relating to the additional calculation of child support to be withheld), Family Code.

Repealer: Section 234.011 (Use of Electronic Benefits Transfer for Child Support Payments), Family Code.

SECTION 29. Provides that Section 102.009, Family Code, as amended by this Act, applies to a proceeding under Chapter 233, Family Code, that is pending before the Title IV-D agency or initiated by the Title IV-D agency on or after the effective date of that provision.

SECTION 30. Makes application of Section 102.011, Family Code, as amended by this Act, prospective.

SECTION 31. Makes application of Sections 154.062 and 154.130, Family Code, as amended by this Act, prospective.

SECTION 32. Provides that Sections 154.181 (Medical Support Order), 154.182 (Health Coverage for Child), 154.183 (Medical Support Additional Support Duty of Obligor), and 154.191 (Remedy Not Exclusive), Family Code, as amended by this Act, apply to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of those provisions.

SECTION 33. Makes application of Section 154.187, Family Code, as amended by this Act, prospective.

SECTION 34. Makes application of Section 157.009, Family Code, as added by this Act, prospective.

SECTION 35. Makes application of Section 157.162, Family Code, as amended by this Act, prospective.

SECTION 36. Makes application of Section 158.203, Family Code, as amended by this Act, prospective to September 1, 2009.

SECTION 37. Makes application of Sections 201.009 and 201.015, Family Code, as amended by this Act, prospective.

SECTION 38. Makes application of Section 232.005, Family Code, as amended by this Act, prospective.

SECTION 39. Provides that Section 34.001, Civil Practice and Remedies Code, as amended by this Act, applies to each judgment for child support under the Family Code, regardless of the date on which the judgment was rendered.

SECTION 40. (a) Effective date: upon passage, except as provided by Subsection (b) of this section, or September 1, 2009.

(b) Effective date: Section 158.203, Family Code, as amended by this Act: September 1, 2009.

EFFECTIVE DATE

Effective date: upon passage, except as provided by Subsection (b) of this section, or September 1, 2009.